

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KRISTY J. DOWNING,

Plaintiff,

v.

Case No. 11-15015

J C PENNEY,

Defendant.

ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION TO COMPEL

Before the court is Plaintiff's motion to compel, filed on April 23, 2012. Defendant responded in opposition on May 7, 2012, and the court determines a motion hearing to be unnecessary. See E.D. Mich. LR 7.1(f)(2). Because this motion is premature, the court will deny it without prejudice.

In her motion, Plaintiff requests that the court order Defendant to produce documents responsive to a request for "[a]ny training materials, instructions, policies, regulations, and/or rules provided by Defendant, or its suppliers, to Defendant's salon employees pertaining to relaxer treatments." (Pl.'s Mot. Compel Ex. A, Dkt. # 13-2.) Defendant originally responded to this document request by providing Plaintiff with a list of all training courses completed by the two hair stylists involved in this matter, indicating in later correspondence that there were no written materials "provided" to the stylists during these sessions. Defendant acknowledges in its response to the motion to compel that there are "a few printed materials and/or CDs regarding relaxer techniques used by the trainers in workshops or broadcasts to the stylists." (Def.'s Resp. Opp'n

Pl.'s Mot. Compel 3, Dkt. # 14.) However, Defendant maintains, the materials are arguably not covered by Plaintiff's original production request, and they contain proprietary information that cannot be produced without a protective order under Federal Rule of Civil Procedure 26(c).

In the last communication between Defendant and Plaintiff on this matter, Defendant asked for clarification as to whether Plaintiff would like the training materials produced and, if so, noted that they would need to enter a protective order. (Pl.'s Mot. Compel Ex. E, Dkt. # 13-6.) Plaintiff did not respond, choosing instead to file this motion to compel. Because Defendant has signaled its willingness to provide the requested discovery once Plaintiff agrees to a protective order, the court sees no reason to compel production at this time. Rather, Plaintiff should resume discussions with Defendant and attempt to negotiate mutually agreeable terms for production. Accordingly,

IT IS ORDERED that Plaintiff's motion to compel [Dkt. # 13] is DENIED WITHOUT PREJUDICE.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 25, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 25, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522